

SUPREME COURT OF INDIA

New India Assurance Co.Ltd.

Vs.

Luxra Enterprises Pvt. Ltd.

C.A.No.9668 of 2014

(Dr.D.Y.Chandrachud and Hemant Gupta,JJ.,)

01.05.2019

JUDGMENT

Hemant Gupta,J.,

1. This order shall dispose of Civil Appeals filed under Section 23 of the Consumer Protection Act, 1985 preferred by both the parties against an order passed by the National Consumer Disputes Redressal Commission its order dated 01.08.2014 wherein, a sum of Rs. 54,93,865/- has been awarded as compensation for loss suffered on account of damage by fire to the Complainant, subject to the condition that the said amount will be paid within 45 days by the Insurance Company otherwise it will carry interest at the rate of 10 % per annum till its realisation.

2. For the facility of reference, the respondent in Civil Appeal No. 9668 of 2014 will be called hereinafter as the Complainant, whereas the Appellant- New India Assurance Co. Ltd. will be called as Insurance Company. Civil Appeal Nos. 4371-72 of 2015 are filed by the Complainant.

3. The Complainant is an Industrial Unit engaged in manufacture of garments. The Complainant obtained a policy of insurance for the risk of fire for the period 27.3.2000 to 26.3.2001 with the assured sum of Rs. 85,0,000/-. It was on 12.07.2000 at about 3.45 AM, the factory of the Complainant was engulfed in fire. It is thereafter, the Complainant lodged a claim for loss due to fire incident in its factory.

4. M/s R.N. Sharma & Co., was appointed as an investigator to conduct a preliminary investigation by the Insurance Company. The preliminary investigation report was submitted on 20.07.2000. It is thereafter, M/s Sunil J. Vora & Associates was appointed as the Surveyor by the Head Office of the Insurance Company on July 28, 2000. The said Surveyor submitted detailed report and accepted the claim of the Complainant for Rs. 54,93,865/-. Out of the said amount, Rs. 1,65,430.53 was the claim on account of damage to building; Rs. 3,93,779.78 was the claim towards the damage to the machinery and Rs. 49,44,657.67 was the claim towards the damage to the stocks. The amount was rounded off to Rs. 54,93,865/-.

5. The Insurance Company issued a communication dated 09.04.2001 to the Complainant asking for certain information after the said report was submitted to the Insurance Company on 12.02.2001. The information sought is as under:-

- "1. List of Machineries (copy of assets register)
2. Loss and profit accounts
3. Purchase details of raw materials
4. Verified copy of Balance Sheet for last 2 years.
5. Original copy of LC & LC with extended date of expiry
6. Details of Financial arrangements for increasing the turn over.
7. Clarify the status of insurable interest on building."

6. The Surveyor in his report has given loss to the machinery giving details of the machinery damaged in fire and the amount admissible in respect of its loss. The Insurance Company also communicated a letter to its Senior Branch Manager on 26.09.2001 that the letter of credit dated 11.05.2000 of Singapore Branch of Bank of India was established for Gurcharan Singh & Co. Pvt. Ltd., but the said letter of credit expired without receipt of any document. It was also mentioned that the Complainant is neither a beneficiary nor a notified party of said letter of credit.

7. Subsequently, M/s ABM Engineers & Consultants was appointed as the second Surveyor by the Insurance Company. The said Surveyor accepted the loss of Rs. 24,76,585/- in its report dated 28.02.2002. The second surveyor has taken into consideration stocks statement submitted by the Complainant to Canara Bank on 30.4.2000, 31.05.2000 and 01.07.2000 respectively. Though, the Manager of Canara Bank is said to have pointed out that these statements are like statutory requirements but the surveyor brushed them aside for the reason that these documents cannot be treated as documents for finalising the stock value. It was further observed that if the stocks statement is to be referred to, there is no reason as to why letter of credit could not be materialized. The relevant extracts from the report of the second surveyor are as under:-

"(i) Stock statement as on 1.7.2000, 31.5.2000, 30.4.2000 submitted by insured to bank. These statements are just like statutory requirement (Refer opinion of Canara Bank Manager, 13B, Investigation verification). These documents cannot be treated as document for finalizing stock value. If we refer to the quantity in these stock statements then there was no reason why LC could not materialize. Further these documents contradict with purchase invoices of items purchased by Luxara Enterprises Pvt. Ltd. From their vendors."

8. The Insurance Company was still not satisfied by the report and thereafter appointed Mr. R.G.Verma, a Chartered Accountant as its third surveyor. The said surveyor recommended total repudiation of claim in its report on 28.05.2002 under Clause 8 of the Insurance Policy on the ground that there were enough valid circumstantial reasons on the part of the Insured to manipulate the fire. It is after the said report furnished on 28.06.2002, the claim was repudiated by the Insurance Company on the same day i.e. 28.6.2002, inter-alia, on the ground that the Complainant had no export order and the letter of credit does not show the

name and address of the buyer. It is mentioned therein that as per stocks statement furnished to Canara Bank on 05.07.2000, 34,800 shirts were ready as on 01.07.2000 and that the letter of credit was expiring on 09.07.2000. Therefore, the Complainant did not explain as to why the said consignment was not shipped on or before 01.07.2000. Another reason given was that the letter of credit was alleged to have been extended up to 08.08.2000 in favour of somebody else. Therefore, there was no reason for extension of letter of credit when the goods were allegedly ready on 01.07.2000 and that the garment could not be exported without endorsement of invoice by Apparel Export Promotion Council but no such endorsement was obtained by the Complainant. The Surveyor further gave another reason, that 104203 meters of fabric was purchased from M/s S.V. Traders but the address given on the invoice and the challans was not of fabric shop but that of a photocopy shop. Still further, another reason communicated was that the letter of credit was opened by M/s Sirdanwal Overseas of Ajay Verma who is facing a criminal case under Sections 420, 406, 120(B) of IPC in FIR No. 98 dated 06.04.2002.

9. The Complainant in his complaint filed on 16.5.2002, has inter-alia averred that he has taken a credit facility from Canara Bank to the tune of Rs. 50,00,000/- and that the loan amount was disbursed in the months of March and May, 2000. Such advance was secured by primary security of stocks and goods lying in the factory of the Complainant apart from the personal guarantee of the Directors of the Complainant and equitable mortgage/residential house of one of the Directors and plant & machinery installed at the above said factory as collateral security. The Bank also got insured the factory building as well as the stocks from the Insurance Company for which premium was paid by debiting the account of Complainant by the Bank.

10. The grievance of the Complainant is that the Insurance Company has appointed one surveyor after another. The first surveyor- M/s Sunil J. Vora & Associates has accepted the damage preferred by the Complainant to the extent of Rs. 54,93,865/- whereas, the second surveyor- M/s ABM Engineers & Consultants reduced the amount to Rs. 24,76,585/- and the third surveyor-R.G. Verma repudiated the total claim.

11. In respect of second survey report, it is pointed out that Shri B. S. Aggarwal of the surveyor- M/s ABM Engineers & Consultants attended the meeting in the office of the Complainant which was attended by the Officers of the Insurance Company. The Complainant submitted a letter to the Regional Manager of the Insurance Company as well as to the Branch Office at Delhi apart from the Grievance Cell, Mumbai on 15.01.2002. Shri B.S. Aggarwal communicated a letter dated 30.01.2002 pointing out that the letter dated 15.01.2002 submitted by the Complainant was misleading as the Complainant could not make available accounting records to the Surveyor.

12. The Complainant again submitted a letter dated 18.3.2002 aggrieved against the actions of the surveyor to the various officers of the Insurance Company. The Complainant also pointed out that the Insurance Company could not appoint one surveyor after another. It was open to the Insurance Company to apply to the Insurance Regulatory and Development Authority to appoint an independent Surveyor under Section 64 UM (3) of the Insurance Act, 1938 but the Insurance Company could not appoint one surveyor after

another till such time, it is successful in getting a report of total repudiation of the claim of the Complainant. The relevant provisions of the 1938 Act read as under:-

"(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessors) :

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.

(3) The Authority may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent report from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such report to the Authority within such time as may be specified by the Authority or if no time limit has been specified by him within reasonable time and the cost of, or incidental to, such report shall be borne by the insurer.

(4) The Authority may, on receipt of a report referred to in sub-section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

Provided that where the Authority issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Authority that all reasonable steps with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due dispatch by him: Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Authority is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:

Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal, to which he would have been subject but for the provisions of this sub-section."

Insurance Company explained the reason for appointing another Surveyor after the report of Surveyor- M/s Sunil J. Vora & Associates was submitted on 01.02.2001. It

was, inter-alia, asserted that quantum of loss has been assessed without verifying and providing any documents and that the clarification sought from the Surveyor has not led to any response. The Insurance Company concluded the reasons for appointing another Surveyor in para 3.9 of its reply which reads as under:-

"Respondent No.1 sought clarification from the Surveyors as well as the insured on certain points but neither the Surveyors nor the insured submitted the clarification or the desired documents. In the absence of the said clarification/documents, Respondent No. 1 was not able to ascertain the cost of the shirts. The Surveyors had taken the value of the shirts at Rs. 235/- but it was not clear from where he had taken the said value. On the other hand, the Complainant had taken the order @ 5.9 US\$ i.e.Rs. 271/- and adding overhead expenses the cost comes Rs. 295/- per shirt. The Preliminary Surveyor in his report dated 20th July, 2000, also did not give the basis of the estimate of loss at Rs. 75,00,000/-. The letters dated 11th May, 2001 was written to the Preliminary Surveyor asking about the basis of the figure of Rs. 75,00,000/- which was not responded. This was followed by reminder dated 28th June, 2001 which was also not responded. The letters dated 11th May, 2001 and 28th June, 2001 is Annexure R-14 and R-15 hereto".

14. Such are the only reasons available in the written statement as to why another Surveyor was appointed. No other record has been furnished for appointment of M/s ABM Engineers & Consultants, second surveyor on 22.08.2001. The Commission in its order held as under:-

"22. There is no evidence on record that the appointment of Surveyor Nos. 2, 3 & 4 was with the consent of the Head Quarters. After the second Surveyor, there is no reasoning given as to why third and fourth Surveyors were appointed. This is an admitted fact that the fire broke out in the premises of the complainant. All the first three Surveyors spoke about this fact in one voice. Even the Investigator/Fourth Surveyor, did not deny the happening of incident and admitted in no uncertain terms that shirts worth rupees few lakhs must have been burnt. There can be no confusions on the point that some loss was occurred to the complainant. Whether the Order or LCs were fake or manipulated or the Order for import of shirts could not be proved or Mr. Ajay Verma was involved in a criminal case has got no bearing on this case. There is no inkling on evidence of record that Mr. Ajay Verma was involved in this particular case.

23. It cannot be laid down as a rule of thumb that the Surveyor cannot ask for other documents after he has informed the complainant that the documents are complete. There lies no rub.

24. Under these circumstances, we have no hesitation to accept the second Surveyor, M/s Sunil J. Vohra's report. The same is partly accepted and we allow the complaint and direct the Insurance Company, OP1, to pay a sum of Rs. 54,93,865/- to the complainant, within 45 days from the receipt of this order, otherwise, it will carry interest @

10% p.a., till its realization. In view of peculiar facts of this case, there is no order as to costs or pendente lite interest."

15. The learned counsel for the Appellant-Insurance Company argued that the Commission has gravely erred in law in not examining the question whether letter of credit was fake or manipulated or that the order of import of shirts could not be proved or Mr. Ajay Verma was involved in a criminal case as it was held that such facts have no bearing on this case. Learned counsel for the Appellant-Insurance Company relies upon an order passed by this Court as reported in Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited which case has examined Section 64 UM of the 1938 Act to hold that there is no prohibition in the Act for appointment of another Surveyor- M/s ABM Engineers & Consultants by the Insurance Company except that the Insurance Company has to record reasons for not accepting the report of the Surveyor- M/s Sunil J. Vora & Associates. Therefore, the Insurance Company has rightly appointed another Surveyor.

16. The Insurance Company relied upon newspaper report dated 09.05.2002 published in Punjab Kesari that the Delhi Police has arrested three persons on the basis of forged documents duping exporters. It was the said newspaper report which was made basis of appointing yet another Surveyor. The relevant extract from the written statement reads as under:-

"3.12 On 9th May, 2002, it was reported in the "Punjab Kesari" newspaper that Delhi Police has arrested a gang of three persons who had duped the exporters of crores of rupees on the basis of forged documents. It also came to the notice of Respondent No. 1 that Mr. Ajay Verma of M/s. Sirdanwal Overseas from whom, the Complainant is alleged to have dealings for LC and procurement of the export order had been arrested in a cheating case in FIR No. 98 dated 6th April, 2002, P.S. Chitranjan Park, under Sections 420/406/12B of the Indian Penal Code. The newspaper report dated 9th May, 2002 is Annexure R-25 hereto.

Respondent No. 1 appointed Shri R.G. Verma, Chartered Accountant to conduct an investigation of the claim. Shri R.G. Verma conducted the detailed investigation and submitted his report dated 28th May, 2002 in which he observed that the claim was fraudulent. The report of Shri R.G. Verma is Annexure R-26 hereto. The following documents were collected by the investigator:-

- i. List of bail applications dated 24th May, 2002.
- ii. FIR NO. 98 dated 6th April, 2002.
- iii. Application for request for judicial custody by the Accused.
- iv. Respondent No. 1 took the photographs of the office of S.V. Traders which are Annexure R-27 hereto".

17. On the other hand, learned counsel for the Complainant rebutted the arguments raised

and referred to communication dated 07.12.2001 addressed by the Head Office of the Insurance Company to its Delhi Regional Office, inter-alia, to the facts that Head Office has appointed M/s Sunil J. Vohra & Associates as the final Surveyor and that the Head Office is unable to understand as to why and who has appointed M/s ABM Engineers & Consultants as Surveyor. The extracts from the said letter read as under: -

"07.12.2001

DELHI RO II

Kind Attn. : MR. S. MAMMAN, ASSTT. GEN. MANAGER,

Re: Fire Claim under Policy No. 11/310830/99/9010 A/c

M/s. Luxra Enterprises Pvt. Ltd.

Date of Loss : 11/12.7.2000

We note from our record that based on your request vide letter dt. 24.7.2000, HO had appointed Sunil J. Vora & Associates as the Final Surveyor and we have communicated the decision to you vide our letter dt. 27.7.2000. we understand that surveyor had already submitted their report also.

We have received a bunch of papers dt. 20.11.01 from M/s ABM Engineers and Consultants pertaining to this claim. We are unable to understand what for they are appointed and who has appointed them. Please note that once HO has appointed a surveyor, you cannot appoint surveyor or investigator without consulting HO. Please let us have your explanation to enable us to apprise Management.

We note that correspondence by M/s. ABM Engineers and Consultants are directly addressed to the Senior Branch Manager only and copies are seen forwarded to various higher offices. Kindly inform us the current status of this claim also for our records."

18. Before considering the respective contentions of the parties, the judgment in Sri Venkateswara (supra) is required to be examined. In the said judgment, this Court has upheld the right of the Insurance Company to appoint Surveyor but such right can be exercised for valid reasons or if the report is found to be arbitrary and that Insurance Company must give cogent reasons without which it is not free to appoint the second Surveyor. The relevant extracts of the judgment read as under:

"33. Scheme of Section 64-UM, particularly of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second surveyor or surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of surveyor/surveyors. There is no prohibition in the Insurance Act for appointment of second surveyor by the insurance company, but while doing so, the insurance company has to give satisfactory reasons for not

accepting the report of the first surveyor and the need to appoint second surveyor.

35. In our considered view, the Insurance Act only mandates that while settling a claim, assistance of a surveyor should be taken but it does not go further and say that the insurer would be bound by whatever the surveyor has assessed or quantified; if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured.

37. The option to accept or not to accept the report is with the insurer. However, if the rejection of the report is arbitrary and based on no acceptable reasons, the courts or other forums can definitely step in and correct the error committed by the insurer while repudiating the claim of the insured. We hasten to add, if the reports are prepared in good faith, with due application of mind and in the absence of any error or ill motive, the insurance company is not expected to reject the report of the surveyors".

19. In view of above, the question to be examined is whether the Insurance Company has reasons or there were inherent defects in the survey report of Surveyor- M/s Sunil J. Vora & Associates or that such report is arbitrary, excessive and exaggerated, before another Surveyor could be appointed.

20. The Surveyor- M/s Sunil J. Vora & Associates was appointed by Head Office of the Insurance Company. The Head Office of the Insurance Company has communicated to the Regional/ Branch Office as to why another Surveyor has been appointed. In view of said fact, the appointment of another surveyor could not be justified when a conscious decision has been communicated by the Head Office of not approving the appointment of second surveyor.

21. Still further, the reasoning given by the local office is that the Surveyor- M/s Sunil J. Vora & Associates has not clarified certain points when clarification was sought for. The said reason stands answered even in the report of Surveyor- M/s ABM Engineers & Consultants. Such surveyor has considered the report of the Canara Bank in respect of stocks statement. Such stocks statement was brushed aside for the reason that if said stocks statement was correct then as to why letter of credit could not be materialised. The Complainant has explained that it was on 15.06.2000, it has been communicated to the consignee to have inspection of the stocks before exporting the consignment. The consignee has not inspected the stocks which led to the extension of letter of credit up to 08.08.2000. It was argued that letter of credit is to facilitate receipt of money from the exporter and once the stock of the Complainant has been verified by the Canara Bank, which had the first charge over the property, therefore, such verification of stock could not be doubted by the Insurance Company only for the reason that letter of credit could not be materialised. The verification of the stocks by the Canara Bank which had primary charge on the stocks could not be doubted in the manner, the surveyor- M/s ABM Engineers & Consultants has reported.

22. Still further, it is explained in the affidavit that the letter of credit was by M/s Sirdanwal Overseas which was endorsed to Gurcharan Singh Company Pvt. Ltd. PTE Singapore. Therefore, the letter of credit was a valid document which could not be said not to be genuine only on the basis of reason that such letter of credit was not in favour of the Complainant when the order was placed on the Complainant by the above said Singapore based firm.

23. Mr. Ajay Verma is an accused in FIR in which there is no allegation in respect of export by the Complainant. The allegation against Ajay Verma is of duping the exporters whereas, there is no such or similar allegation against the Complainant. The Complainant has also averred that there was endorsement by the Apparel Export Promotion Council, therefore factually such assertion of the Insurance Company is incorrect.

24. Thus, we find that there was no valid reason for the Insurance Company not to accept the report of the surveyor- M/s Sunil J. Vora & Associates nor there is any proof that such report is arbitrary & excessive. There are no cogent reasons to appoint Surveyors time and again till such time one Surveyor gives a report which could satisfy the interest of the Insurance Company.

25. In fact, in the present case it is evident that the claim of Rs. 54,93,865/- was accepted by the surveyor- M/s Sunil J. Vora & Associates. The second surveyor- M/s ABM Engineers & Consultants accepted the claim in the sum of Rs. 24,76,585/-. The third surveyor - R.G. Verma recommended total repudiation of claim. It is the third Surveyor's report which sub-served the interest of the Insurance Company which was made basis of repudiation of the claim of the Complainant on the same day, when the report was furnished. We find that in view of the judgment in Sri Venkateswara (supra), it is not open to appoint another Surveyor till such time, it gets a report in its favour. In fact, the appointment of the Surveyors was to repudiate the claim of the Complainant on one pretext or the other.

26. Thus, we do not find any illegality in the order passed by the Commission. Consequently, Civil Appeal No. 9668 of 2014 is dismissed.

27. However, we find that the Commission has not granted interest on the amount found due and payable to the Complainant. Therefore, Civil Appeal Nos.4371-72 Of 2015 preferred by the Complainant are allowed. The Complainant shall be entitled to the interest on the amount of Rs. 54,93,865/- at the rate of 6% per annum from the date of filing of petition till the payment of the amount.